TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 628.

WILLIAM L. WOOD, PLAINTIFF IN ERROR,

vs.

WILLARD CARPENTER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED NOVEMBER 9, 1878.

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1 UNITED STATES OF AMERICA, *ss:*

To Willard Carpenter, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Indiana, wherein William L. Wood is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Walter Q. Gresham, one of the judges of the circuit court of the United States for the district of Indiana, this 29th day of July, in the year of our Lord one thousand eight hundred and seventy-eight.

WALTER Q. GRESHAM,
Judge.

2 DISTRICT OF INDIANA,
County of Vanderburgh, ss:

Before me, the undersigned, the clerk of the circuit court of the United States for the district of Indiana, this day personally appeared Samuel Day, deputy United States marshal for the district of Indiana, who being duly sworn according to law, on his oath says that on the eighth day of August, A. D. 1878, he served upon Willard Carpenter a true copy of the within and foregoing citation.

BEN. SPOONER,
U. S. Marshal,
By SAM. DAY, *Deputy.*

Subscribed and sworn to before me this 9th day of August, A. D. 1878.

[SEAL.] W. P. FISHBACK,
Clerk.

Services, &c., $3.10.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the district of Indiana, at Evansville, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between William L. Wood and Willard Carpenter, a manifest error hath happened, to the great damage of the said William L. Wood, as by his complaint appears: We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the 2d day of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme
4 Court may cause further to be done therein to correct that

error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 29th day of July, in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.] W. P. FISHBACK,
Clerk of the Circuit Court of the United States for the District of Indiana.

5 Pleas of the circuit court of the United States for the district of Indiana, at Evansville, begun and holden at the United States court rooms in the city of Evansville, in said district, on the first Monday of February, in the year of our Lord one thousand eight hundred and seventy-three, before the honorable Walter Q. Gresham, judge of district court of the United States for the district of Indiana, and ex officio one of the judges of said circuit court.

WILLIAM L. WOOD *vs.* WILLIARD CARPENTER. } Case attachment, &c.

Be it remembered that heretofore, to wit, on the 21st day of October, A. D. 1872, there was filed in the office of the clerk of said court a declaration in the words and figures following, to wit:

And afterwards, to wit, on the 21st of January, 1874, by leave of court, an amended declaration was filed in words and figures following, to wit:

In the circuit court of the United States for the district of Indiana, at Evansville.

6 WILLIAM L. WOOD *vs.* WILLIARD CARPENTER. } Trespass of the case.

For amended complaint, by leave of court, William L. Wood, who is a citizen of the State of Connecticut, plaintiff, complains of Williard Carpenter, who is a citizen of the State of Indiana, in the county of Vanderburgh, defendant, in a plea of trespass on the case; for that whereas, before the committing of the grievances by the defendant, as next hereinafter mentioned and described, the said plaintiff had recovered divers judgments against the said defendant for divers large sums of money upon and on account of sundry debts contracted by the defendant to the plaintiff, and which were evidenced by bills of exchange and notes long previous to the date of said judgments, to wit, in the year 1857, which said judgments are described as follows, to wit: one judgment rendered in favor of the said plaintiff and against the said defendant by the Vanderburgh circuit court, in the State of Indiana, on the 16th day of May, 1860, for the sum of three thousand five hundred and seventy-eight $\frac{06}{100}$ dollars ($3,578.06), besides the costs of same taxed at dollars, and which was and is recorded in the records of said court in order book K, on page 696; also one other judgment rendered as aforesaid by the same court, on the 15th day of
7 April, 1863, for the sum of two thousand one hundred and sixty-two $\frac{18}{100}$ dollars ($2,162.18), besides the costs of said court taxed

at dollars, which last mentioned judgment is recorded in due form in the records of said court in the order book L, on page 620; also one other judgment rendered in favor of the said plaintiff and against the said defendant by the court of common pleas of Vanderburgh County, on 22d day of August, 1860, for the sum of two thousand eight hundred and sixteen and $\frac{86}{100}$ dollars ($2,816.86), besides the costs of suit taxed at dollars, which said last mentioned last judgment is duly recorded in the records of said last mentioned court in order book No. 4, on page 221, as will more fully and at large appear by a reference to the records of said courts, which in the aggregate amounts to the sum of eight thousand five hundred and fifty-seven and $\frac{07}{100}$ dollars ($8,557.07); that at the time of the execution of the notes and bills of exchange which are the foundation of said judgments said defendant was the owner of a large amount of real and personal property in Vanderburgh and other counties in the State of Indiana, of great value, to wit, of the value of five hundred thousand dollars ($500,000.00).

8 That for the purpose of cheating and defrauding the plaintiff, and others, his creditors, by depreciating the value of the claims of the plaintiff and others, and thereby inducing them to sell the same to him for less than their face , defendant, on the , day of 1858 and at sundry other days and times, entered into a fraudulent conspiracy with his brother, Alvin B. Carpenter, and one and others, and to the plaintiff unknown, whereby, in order to encumber his real estate, so that it should not be sold for the payment of his debts, he confessed sundry fraudulent judgments for sundry large sums, and afterwards made a fraudulent assignment of all his property to one William H. Walker and Henry D. Allis, by means of which he fraudulently procured the title to all said real and personal estate to be vested in said Alvin B. and others, who held them in secret trust for the defendant, by means of which the title to the same was so concealed as to prevent the plaintiff from levying his executions issued upon said judgments; and the said plaintiff further avers, that for the purpose of forcing and compelling the said defendant to pay the said debts and judgments on the 14th day of January, 1862, he, the said plaintiff, caused the said defendant to be arrested in the city of Boston, in the commonwealth of Massachusetts, by the sheriff of Suffolk County, in

9 said Massachusetts, upon and by virtue of a writ of execution issued in due form of law to the said sheriff, and upon said process the said defendant was in due form of law brought before one John Lowell, a master in chancery, to be discharged from the custody of said sheriff by taking the oath provided for insolvent debtors by the laws of said commonwealth; and that afterward, to wit, on the 21st day of February, 1862, the defendant, unjustly and wrongfully intending to cheat and defraud the said plaintiff, falsely, wilfully and knowingly did depose and swear before the said master in chancery, who was then and there fully empowered and authorized by law to administer said oath to the said defendant, that he, the said defendant, was a poor person, and was not at that time possessed of property to the value of twenty dollars, and upon the examination of the said defendant, upon oath as aforesaid, the said defendant did further knowingly, wilfully and falsely depose and swear, that before that time, in good faith he had assigned his property of every kind, personal and real, to certain persons by him th'n warned for the benefit of his, the said defendant's, creditors. And that afterwards, on the day last above mentioned, by reason of the said defendant taking said oath,

and by reason of committing said perjury, the said defendant was discharged from the custody of the said sheriff, and the said plaintiff was taxed with the costs of said proceedings before said master in chancery, which amounted to a large sum, to wit, two hundred dollars, which he was compelled to pay and which he did pay.

And the said plaintiff further avers that the said defendant, still intending to cheat and defraud the said plaintiff, from the time of his discharge from custody as aforesaid until the present time, has falsely, and fraudulently, and constantly pretended and represented to the plaintiff and others his creditors that he was and is a poor person, wholly destitute of property and of the means and pecuniary ability to pay his debts, or any part thereof, and having thus put his property beyond the reach of the process of law, by said fraudulent judgments and assignments, and having so procured his discharge from custody, as a poor person, and thus induced the plaintiff to believe that he had no property out of which said several judgments could be collected, said defendant afterwards, to wit, on the 1st day of January, 1864, upon the said false pretense and representations and in pursuance of said conspiracy, and the further fraudulent and false pretense and representations, then and there by said defendant made, that his son in-law, one Dewitt C. Keller, would purchase said judgments out of his own money and means, procured said plaintiff, who then and there believed and relied and acted upon said false representation and oath as true, to sell and assign said judgments in due form to said Keller for the *the* consideration of fifty per centum of the principal and accrued interest, to wit, the sum of $5,104.52, whereas in fact and in truth said judgments were purchased by said Keller with money and means furnished by said Carpenter, and were held by said Keller in secret trust for the defendant until the 1st day of June, 1873, when said Keller, at the instance and by procurement of said defendant, entered the same satisfied.

And the plaintiff further avers that during all the time from and before the rendition of the said judgments of the plaintiff, and against said defendant and up to the present time, the said defendant was the real owner of more than $200,000.00 in value of real estate, the title to which was so secretly held by said Alvin B. and others in secret trust for him, the title to which till long after the making of said assignment was fraudulently concealed from the plaintiff, but which has within the last twelve months past been reconveyed to the defendant, and the same now is held by him by absolute indefeasible title.

And the said plaintiff further avers that he had no knowledge of said ownership of the said property by the said defendant as aforesaid, nor of the said frauds, nor of the said secret trust, nor of the falsity of said several false and fraudulent representations, until during the present year of 1872, and so the plaintiff says that he has been injured and sustained damages by the frauds, deceits, and perjury of the said defendant as aforesaid to the amount of ten thousand dollars ($10,000.00). Wherefore he brings his suit and for which he demand judgment and all other proper relief.

A. L. ROBINSON AND
ASA AND I. E. IGLEHEART,
Attorneys or Pl'tff.

Whereupon there issued out of the office of the clerk of said court a summons, in words and figures following, to wit:

And be it further remembered, that afterwards, to wit, on Wednesday,

the 4th day of February, 1874, said day being the 3rd day of the regular February term, A. D. 1874, of said court, the following further proceedings were had in said cause, to wit: Comes now the defendant, by Shakelford, Palmer & Richardson, his attorneys, and files his demurrer to the plaintiff's declaration, in the words and figures following, to wit:

United States circuit court for district of Indiana, sct.

WILLIAM L. WOOD
vs.
WILLIARD CARPENTER.

Comes now said Williard Carpenter, defendant, and files his demur'er to the amended complaint of said plaintiff, and for cause of demur'er says said amended complaint does state facts sufficient to constitute a cause of action against this defedant, wherefore he prays the judgment of the court herein.

SHAKELFORD AND RICHARDSON,
CONRAD BAKER,
Def'ts Attorneys.

14 And afterwards, to wit, on Monday, the 9th day of February, 1874, said day being the tenth day of the regular February term, A. D. 1874, of said court, the following proceedings in said cause were had, to wit:

Comes now the defendant, by counsel, and saith that the said plaintiff's amended declaration is not sufficient in law, and thereupon the said plaintiff comes also by counsel, and says that the amended declaration is good and sufficient in law, and the court having heard the argument of counsel and being advised in the premises, doth now here overrule said demur'er by said defendant heretofore filed, to which ruling of the court the defendant excepts.

Whereupon a rule is entered requiring the defendant to file his answer by Thursday morning, February 12, 1874.

And afterwards, to wit, on Tuesday, October the 20th, A. D. 1874, said day being the second day of the special October term, A. D. 1874, of said court, the following further proceedings in said cause were had, to wit:

On motion of Messrs. Robinson and Igleheart, of counsel for the plaintiff, a rule is entered requiring the defendant to file his answer by to morrow morning, October 21st, 1874.

15 And afterwards, to wit, on Wednesday, October the 21st, A. D. 1874, said day being the third day of the special October term, A. D. 1874, of said court, the following further proceedings were had in said cause, to wit:

Comes now the defendant, by Mess. Shakelford and Richardson, his attorneys, and files his answer in three paragraphs, in the words and figures following, to wit:

In the circuit court of the United States for the district of Indiana, Evansville.

WILLIAM L. WOOD
vs.
WILLIARD CARPENTER.

1st Par'g'h. The defendant, Williard Carpenter, by Shakelford and

Richardson, his attorneys, comes, and for answer to the complaint of the plaintiff, Wm. L. Wood, says that he denies each and every allegation in said complaint contained.

2nd Par'g'h. The said defendant, Williard Carpenter, for his further answer to the complaint of the plaintiff, William L. Wood, says that the alleged cause of action stated in complaint did not accrue within six years before the commencement of this action.

16 3rd Par'g'h. The defendant, Williard Carpenter, for his further answer to the complaint of the plaintiff, William L. Wood, says that he was not guilty of the alleged grievances in said complaint at any time within six years before the commencement of this action.

SHAKELFORD AND RICHARDSON,
Attorneys for Defendant.

And afterwards, to wit, on Friday, the 23d day of October, A. D. 1874, said day being the fifth day of the special October term, A. D. 1874, of said court, the following further proceedings in said cause were had, to wit:

Comes now the plaintiff, by the counsel, Mess. A. L. Robinson and Asa and I. E. Igleheart, and files his reply, in the words and figures following, to wit, to the second and third paragraphs of the defendant's answer.

In the circuit court of the United States for the district of Indiana.

WILLIAM L. WOOD
vs.
WILLIARD CARPENTER.

17 The plaintiff, for reply to the 2d and 3rd paragraphs of the defendant's answer herein, says precludi non, because he says the said defendant concealed the fact that the said confessed judgments in favor of the said Chapman, and others, were false and fraudulent, and that the said Alvin B. Carpenter, and others, held the said property, real and personal, in secret trust for the defendant, and that the said defendant had committed perjury before the said John Lowell, esq., and that the said Dewitt C. Keller had bought the said judgments with the funds of the said defendant for his use and benefit, and that the defendant was in fact the real owner of the said property, real and personal, and that the same was held by the said Alvin B. Carpenter and others in secret trust for the defendant, and that the said representations of the defendant as to his insolvency were false and fraudulent; and the plaintiff further avers that he had no knowledge of the said facts so concealed by the defendant until the year A. D. 1872, and a few weeks only before the bringing of this suit, and this he is ready to verify.

A. AND I. E. IGLEHEART,
A. L. ROBINSON,
Atty's for Pl'ff.

18 And afterwards, to wit, on Monday, the 26th day of October, A. D. 1874, said day being the eighth day of the special October term, A. D. 1874, of said court, the following further proceedings in said cause were had, to wit:

Now here, by consent of parties, this cause is continued until the next term of this court.

And afterwards, to wit, on Tuesday, the 5th day of October, A. D. 1875, said day being the second day of regular October term, A. D. 1875, of said court, the following further proceedings in said cause were had, to wit:

Now here, by agreement of counsel, this cause is continued until the next term of this court.

And afterwards, to wit, on Tuesday, the 3d day of October, A. D. 1876, said day being the second day of the regular October term, A. D. 1876, of said court, the following further proceeding' in said cause were had, to wit:

Comes now Messrs. Shakelford and Richardson, of counsel for the defendant, and file their demurrer, in the words and figures following, to wit:

The said defendant demurs to the plaintiff's reply to the second
19 and other paragraphs of the defendant's answer, and for grounds of objection thereto he says that the said reply does not contain the statement of facts sufficient to constitute a defense to the said answer.

SHAKELFORD AND RICHARDSON,
DENBY AND KUMLER,
Att'ys for Def't.

To the replication of said plaintiff, and saith thereby that the said replication is not good and sufficient in law; and comes also the said plaintiff, by Mess. Igleheart and Robinson, his counsel, and says his said replication is good and sufficient in law; and the court, having heard the argument of counsel and being advised in the premises, doth now here sustain demurrer; and, upon motion of the plaintiff's counsel, leave is granted the said plaintiff to amend his said replication. Said amendment to be made within thirty days.

And afterwards, to wit, on Wednesday, the 4th day of April, A. D. 1877, said day being the third day of the regular April term, A. D. 1877, of said court, the following further proceedings were had, to wit:

Now here, on motion of the court, this cause is continued until the next term of this court.

20 And afterwards, to wit, on the sixth day of October, A. D. 1877, said day being the seventh day of the regular October term, A. D. 1877, of said court, the following further proceedings in said cause were had, to wit:

Comes now the plaintiff by Mr. Robinson, his attorney, and files an amended replication to the defendant's answer in the words and figures following, to wit:

In the circuit court of the United States for the district of Indiana.

WILLIAM L. WOOD }
vs. }
WILLIARD CARPENTER. }

The plaintiff for reply to the 2nd and 3rd paragraphs of the defendant's answer herein says, precludi non, because he says the said defendant concealed the fact that the said confessed judgments in favor of the said Chapman and others were false and fraudulent, and that the

said Alvin B. Carpenter and others held the said property, real and personal, in secret trust for the defendant, and that the said defendant had committed perjury before the said John Lowell, esq., and that the said Dewitt C. Keller had bought said judgments with the funds of the said defendant and for his use and benefit, and that the defendant
21 was in fact the real owner of the said property, real and personal, and that the same was held by the said Alvin B. Carpenter and others in secret trust for the defendant, and that the said representations of the defendant as to his insolvency were false and fraudulent; and the plaintiff further avers that the said concealment was effected and procured by the defendant by means of the perjury, fraud, false representations, fraudulent conveyances, and wicked devices set forth and described in the plaintiff's declaration herein. And the plaintiff further avers that he had no knowledge of the said facts so concealed by the defendant until the year A. D. 1872, and a few weeks only before the bringing of this suit, and this he is ready to verify.

A. AND I. E. IGLEHEART,
A. L. ROBINSON,
Att'ys for Pl'ff.

Whereupon, comes also the defendant, by Mess. Denby, Kumler and Shackeford, his attorneys, and files his demurrer in the words and figures following, to wit:

The said defendant demurs to the plaintiff's reply to the second and other paragraphs of the defendant's answer, and for grounds of objection thereto he says, that the said reply does not contain the statement of facts sufficient to constitute a defense to the said answer.

SHAKELFORD AND RICHARDSON,
DENBY AND KUMLER,
Att'ys for Def't.

22 To said amended replication, and saith thereby that said amended replication is not good and sufficient in law. And comes also said plaintiff by Mr. Robinson, his attorney, and says his said amended replication is good and sufficient in law. And the court having heard the argument of counsel and being advised in the premises doth now here sustain said demurrer, to which ruling and judgment of the court the said plaintiff doth now here except, and prays his writ of error to the Supreme Court, which is granted upon filing in due time his appeal bond, with approved security in the penal sum of two hundred ($200) dollars.

And afterwards, to wit, on Monday, the 22d day of July, A. D. 1878, the following further proceedings in said cause were had, to wit:

Now, at this day, comes the plaintiff and tenders his bond for a writ of error in this case in the penelty of two hundred ($200) dollars, with Hamilton W. Conklin as surety, and said bond is approved and ordered filed in this cause, and said bond is in the words following:

23 Circuit court of the United States for the district of Indiana, at Evansville.

WILLIAM L. WOOD
v.
WILLIARD CARPENTER.

Know all men by these presents that we, William L. Wood, of Hart-

ford, Hartford County, and State of Connecticut, and Hamilton W. Conklin, also of said Hartford, are held and firmly bound unto Williard Carpenter in the sum of two hundred dollars, to be paid to the said Williard Carpenter, his executors or administrators. To which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and *one* and each of our heirs, executors, and administrators, firmly by the presents, sealed with our seals, dated this 8th day of July, A. D. 1878.

Whereas the above-named William L. Wood hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the district of Indiana: Now, therefore, the condition
24 of this obligation is such that if the above-named William L. Wood shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

WILLIAM L. WOOD. [SEAL.]
HAMILTON W. CONKLIN. [SEAL.]

Approved.

W. Q. GRESHAM,
U. S. Dist. Judge.

I, Edwin E. Marom, clerk of the United States circuit court for the district of Connecticut, that the principal and surety in the above bond are well known to me, and that they are solvent and severally good for the contents thereof.

In testimony whereof I have set hereto my hand and the seal of said court at Hartford, in said district, this 8th day of July, A. D. 1878.

[SEAL.] E. E. MAROM,
Clerk.

25 DISTRICT OF INDIANA, AT EVANSVILLE, *ss:*

I, William P. Fishback, clerk of the circuit court of the United States for the district of Indiana, do hereby certify the above and foregoing is a full, true, complete and correct copy and transcript of the record and proceedings in the cause of William L. Wood versus Willard Carpenter, as the same now appears and is of record on file in my office at Evansville, in said district.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in the city of Evansville, in the district aforesaid, this 29th day of July, A. D. 1878.

[SEAL.] W. P. FISHBACK,
Clerk.

(Indorsed:) U. S. circuit court, district of Indiana. William L. Wood vs. Willard Carpenter. Record. A. L. Robinson, A. & J. E. Igleheart.

(Indorsement on cover:) No. 628. William L. Wood, plaintiff in error, vs. Willard Carpenter. Indiana C. C. U. S. Filed 9th November, 1878.

REC. 628—2

In the Supreme Court of the United States.

WILLIAM L. WOOD,

vs.

WILLARD CARPENTER.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF INDIANA.

PLAINTIFF'S BRIEF.

In the Supreme Court of the United States.

WILLIAM L. WOOD,

vs.

WILLARD CARPENTER.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF INDIANA.

PLAINTIFF'S BRIEF.

This was an action on the case for fraud, begun in the Circuit Court October. 21st, 1872; after several continuances, the plaintiff filed an amended Declaration, on the 21st day of January, 1874; to which the defendant filed a demurrer, which was overruled

by the court, and during the October term, 1874, the defendant filed his answer to the declaration, in three paragraphs:

1st. A general denial.

2nd. "Statute of limitation." That the cause of action did not occur within six years.

3rd. Not guilty within six years.

The plaintiff filed a reply to the 2nd. and 3rd. paragraphs of the answer, to the effect, that the defendant had concealed the said frauds from the plaintiff; and that he had no knowledge of them, until the year 1872, and a few weeks only, before beginning this action.

To this reply, the defendant filed a demurrer, which the court sustained, and rendered final judgment against the plaintiff.

The plaintiff assigns the ruling of the court, in sustaining defendant's demurrer to plaintiff's reply, and the rendering of final judgment.

The declaration is in form of an action on the case, to recover damages for fraud; and contains substantially the following allegations:

"That in the year 1857, the defendant became indebted to the plaintiff, in divers sums, for borrowed money; and that for these debts, the plaintiff recovered three judgments against the defendant, in Vanderburg County, Indiana, as follows:

One for,	$ 3,578.03	May 16th, 1860.
One for,	" 2,162.18	April 15th, 1863.
One for,	" 2,816.86	August 22nd, 1860.
Making,	$ 8,557.07,	all of which are of record, in the

courts of that County, to which reference is made.

That at the time the said several debts were contracted; the defendant was the owner of real and personal property, situated in Indiana, to the value of half a million of dollars.

That to cheat and defraud the plaintiff, and his other creditors, by depreciating the value of their claims, and thereby in-

duce them to sell their debts for less than their face, the defendant, on the 14th day of April, 1858; entered into a fraudulent conspiracy with his brother, Alvin B. Carpenter, and other parties not known to the plaintiff, in order to encumber his real estate, so that it should not be sold for the payment of his debts; the defendant confessed sundry fraudulent judgments, for large sums of money; and afterwards made a fraudulent assignment of all his property to Wm. H. Walker and Henry D. Allis assignees, by means of which, he fraudulently procured the title of all his property to be vested in the said Alvin B. Carpenter and other persons, who held the same, in secret trust for the defendant, for a long time; by means whereof, the title was so concealed, that the plaintiff was prevented from levying his executions issued on said judgments.

And to enforce payment on the said debts and judgments; the plaintiff, on the 14th day of January, 1862, caused the defendant to be arrested, in the City of Boston, by the sheriff of Suffolk County, in the State of Massachusetts, by virtue of a writ in due form; and that the defendant was brought before a Master in Chancery, to be discharged from custody, by taking the insolvent debtors' oath; and that on the 21st day of February, 1862, the defendant to cheat and defraud the plaintiff, falsely, willfully and corruptly swore, before the said master, that he was a poor person, and that he did not own, or possess property to the value of twenty dollars; and that he had before that time, in good faith, assigned all his property for the benefit of his creditors; and that by means of said perjury, the defendant was discharged from custody, at the cost of the plaintiff.

That further to deceive and defraud the plaintiff, the defendant, from the time of his said discharge, until the present time, has falsely and fraudulently at all times, represented to the plaintiff, and to his other creditors; that he was wholly destitute of property and means to pay his debts; and by said frauds and perjury; the defendant had caused the plaintiff to believe, that

he was, in fact, a poor person; and that he had no property with which said judgments could be paid or collected.

That afterwards, on the first day of January, 1864; the defendant, falsely and fraudulently, represented to the plaintiff; that his son-in-law, Dewitt C. Keller, desired to buy the said judgments, on his own account, and with his own money; and the plaintiff believing and relying upon the said fraudulent representations, so made by the defendant, and upon his oath solemnly taken; sold and assigned the said judgments, to the said Keller, for fifty per cent. of the amount then due thereon; viz: for $5,104.52

But in truth and in fact, the said Keller bought the said judgments for Carpenter; and with money secretly furnished by him for that purpose; and the judgments were held by Keller, in secret trust, for defendant, until the first day of June, 1873; when Keller, by procurement of defendant, entered satisfaction of the same.

That during all the time, from and before the said judgments were rendered, and up to the present time; the defendant was the true and real owner of real estate to the value of $200,000.; the title of which, was secretly held by the said Alvin B. Carpenter and others, in secret trust for the defendant; the title of which was fraudulently concealed from the plaintiff, until within the last twelve months; when the same was reconveyed to the defendant, by his said brother, which he now holds by a valid title, in fee simple.

The plaintiff had no knowledge of the ownership of said property, by the defendant; nor of the said frauds; nor of the said secret trusts; nor of the falsehoods and deceit of the defendant; until the year 1872, and a few weeks only, before this suit was begun.

The defendant demurred to this amended complaint, Feb-

ruary 4th., 1874 which was overruled. (by Judge Hopkins of Wisconsin.)

The defendant then filed his answer in three paragraphs, as already stated.

The plaintiff replied to the 2nd and 3rd paragraphs of the answer, to the effect, that the defendant concealed the said frauds, and secret trusts from the plaintiff; and that he had no knowledge of the facts, until the year 1872, and a few weeks only before this suit was begun.

That the concealment was effected by the defendant, by means of the perjury, fraud, false representations and wicked devices, described in the plaintiff's declaration.

The defendant demurred to this reply, and had judgment, by Judge Gresham.

The plaintiff assigns for error: 1st. The ruling of the Circuit Court in sustaining the defendant's demurrer to the plaintiff's reply ; and 2nd. The rendering of a final judgment against him; and he prosecutes this writ of error to reverse that judgment.

The "Statute of limitations," relied on by defendant's counsel is found in 2 G. & H. Ind. Statutes; p. 156. "An action for relief against frauds must be commenced within six years." But section 219 of the same act, reads as follows:

"If any person liable to an action, shall conceal the fact from the knowledge of the person entitled thereto; the action may be commenced at any time within the period of limitation, after the discovery of the cause of action."

It is contended by defendant's counsel, that the plaintiff's cause of action occurred at the time, when the defendant perpetrated the first fraud, in April, 1858; but the declaration details a series of conspiracies and frauds, beginning in that year, and which were continued through all the intervening years, until the year 1872; when the defendant received a re-conveyance of his property, which had been fraudulently assigned by him, in the year 1858. The transactions of those fourteen years, constituted *one*

grand fraud; the sole object of which, was, to cheat and defraud the plaintiff, and his other creditors.

Counsel for defendant further contend, that this action is barred by the "Statute of Limitations," because these conveyances were placed upon the public record, and hence, they were notice to all the world. True, they were recorded, but *the fact* that the property thus conveyed, belonged to Carpenter; and was held in secret trust by his brother, did not appear of record; nor did the assignment of the judgments, so fraudulently procured, notify the plaintiff; that it had been secretly obtained by defendant, for his benefit, and paid for with his money.

The ruling of the Court, upon the demurrer to the complainant, was clearly correct, as will appear from the following authorities:

In the case of Hanna admr., vs. Jeff. R. R. Co.; 32 Ind; p. 113; the court says: "Ordinarily, the Statutes of limitation must be pleaded; though the facts appear by the averments of the complaint."

The reason for this is, that there are exceptions to those statutes; and the plaintiff should, therefore, have the opportunity of replying to the plea, so that he may show that the case is within any of the exceptions; to compel him to make these averments in the complaint, would tend to needless and inconvenient prolixity. In the case of Perkins vs. Rogers; 35 Ind.; p. 169; the same court lays down the same rule, in the following language: "When a Statute of limitation contains no exceptions, and it appears upon the face of the complaint, that the action is barred; the question can be raised by demurrer, but when there are exceptions; the statute must be pleaded, so as to give the plaintiff the opportunity of replying the facts that will bring it, within the exception." See Potter vs. Smith; 36 Ind.; 231; also, Cravens vs. Duncan; 55 Ind.; 349.

That a reply of concealment of a cause of action, by the defendant, may be filed by plaintiff; see 3 Ind. Rep.; 146,—222; 4,

do., 502. These rulings were made under the law of Ind., R. S. 1843; p. 588; which was similar to the act of 1852, cited above.

The latest decision of the Supreme Court of Indiana, under this statute is; Bescher vs. Paulus; 58 Ind; 271; in which the pleadings and issue are similar to the case at bar, with this exception; in that case, the plaintiff replied: "that he had no notice of the fraud, until, etc." In this case, the plaintiff replied, that, "the defendant concealed his fraud; and that he had no knowledge of the same until, &c."

The defendant, by his demurrer to plaintiff's reply, admits that he perpetrated the frauds, described in the declartion: and that he concealed the same from the plaintiff, as therein alleged. Attention is called to the fact, that neither of the pleas of the statute, denies the allegations in the declaration, and that it alleges a *fraudulent concealment* of the acts of fraud; and further alleges, that the plaintiff was induced to believe, and did up to the time of the conveyances and transfers in 1872; believe the *false* and fraudulent representations, alleged therein to be true.

These allegations of the facts of concealment having been made in the declaration, and admitted in the answers; need not be reiterated in the reply. But a general allegation is sufficient upon the plain principle, that a fact alleged in a pleading, and not denied; is to be taken in all stages of the cause as true.

So that the allegation in the reply of the concealment, is, substantially, an allegation that the defendant concealed the cause of action, in manner and form, as the same is stated in the declaration, which is clearly sufficient under the rulings; else the provision in the statute were a farce.

For all these reasons, we ask a reversal of the judgment below.

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Asa Iglehart and
Jno. E. Iglehart,
Counsel for Appellants.

IN THE

Supreme Court of the United States.

WILLIAM I. WOOD

vs.

WILLARD CARPENTER.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF INDIANA.

ARGUMENT FOR APPELLEE.

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DANIEL B. KUMLER.
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IN THE

Supreme Court of the United States.

WILLIAM I. WOOD,
vs.
WILLARD CARPENTER,

Appeal from the United States Circuit Court for the District of Indiana.

ARGUMENT FOR APPELLEE.

The substantial questions raised in this case are the same that are presented for decision in the suit of the Mercantile National Bank of Hartford, vs. Willard Carpenter, John Love, Dewitt C. Keller, which has been submitted on brief filed by the respective parties.

In that case the Appellant filed its Bill in Equity, to set aside the assignment of a judgment recovered the 6th. day of May, 1859, by the Mercantile Bank, a corporation doing business in the City of Hartford, against Willard Carpenter, which had been assigned to Dewitt C. Keller, on the thirty-first day of May, 1865. The allegations in the Bill were that the assignment was procured by fraud.

This case is a common law action brought by the Appellant to recover damages for fraud, perpetrated in the assignment of judgments recovered by Wood the Appellant,

against Willard Carpenter in the months of May, August, 1860, and the month of April, 1863.

There were a great many judgments,, and all of them were assigned to Keller on the first day of January 1864, and the 6th day of May, 1865, and the assignors being uncertain whether their remedy — if they have any — is at law or in Equity, have brought these two forms of proceeding — one in Equity to set aside the assignments, and one in law to recover damages for the fraud. This class of cases illustrates forcibly the advantages of that system of jurisprudence which combines law and equity procedures in one action and settles all questions in one suit. But the equity procedure being still preserved in the Federal Courts, it was competent to take the chances in the two forms of action. We believe, however, that the same line of reasoning which would move the Court to refuse equitable relief would settle the right to recover at law. It is well understood that the statute of Limitations will not begin to run until the fraud shall be known, but it is also true at law as it is in equity, that laches or negligence will bar an action after the time limited by the statute. We might, therefore, safely refer the Court to the briefs already on tile in the suit of the Mercantile National Bank of Hartford against this same Appellee. But an abundance of caution induces us to repeat substantially here the argument contained in that brief.

The complaint in this case is copied in the Appellant's brief.

The facts are briefly these: In 1858 Carpenter was largely indebted, he made an assignment of all his property by deed to William H. Walker and Henry D. Allis, assignees, the 14th day of April, 1858; the Deed stood without

any attack being made on it; on the first day of January 1864, the Appellant assigned his judgments above mentioned to Dewitt C. Keller; this transaction was fraudulent in this, that Carpenter represented that he had no means, and that Keller was furnishing the money to buy the judgments; whereas he, Carpenter, furnished the money out of his own means; that afterwards, in 1871, a large amount of Real Estate was conveyed by Keller to Carpenter; and that Appellant during all these years from 1858 to 1872 — when suit was commenced — did not know of the fraud charged.

To the declaration the Appellee filed his answer setting up the Statute of Limitations. The Statute in Indiana is found in the Second Volume of the Revised Statute of 1876 page 121, and is as follows: The following actions shall be commenced within six years after the cause of action has accrued and not afterwards.

* * * * * * * * * * *

For relief against frauds.

The Appellant filed his Reply stating that the Appellee had concealed the said frauds from the Appellant, and that he had no knowledge of them until the year 1872 and a few weeks only before beginning this action.

To this Reply a demurrer was sustained, and final judgment for Appellee.

The question is, was the Reply sufficient?

The Appellant concedes that the answer of the Statute of Limitations was good, but claims that his Reply was sufficient. Our Statute p. 128, 2 R. S. 1876, Sect. 219 is this:

"If any person liable to an action shall conceal the fact from the knowledge of the person entitled thereto, the action may be commenced at any time within the period of

limitation, after this discovery of the cause of action."

It is plain to be seen that the gist of the action is that Carpenter fraudulently conveyed his property to Walker and Allis, his assignees.

In Muselman vs. Kent, 33 Ind. p 453, the Supreme Court in an action brought to set aside a fraudulent conveyance say that the limitation of six years is a good bar to that kind of an action.

In Cravens vs. Duncan, 55 Ind. p. 349. they say: "there is no doubt that the cause of action is embraced in the clause of the Statute declaring that actions "For relief against Frauds" shall be brought within six years."

In Wynne et al vs. Comertson, 52 Ind. p. 317, the Court uses this language: "The Statute of Limitations requires actions for relief against fraud to be brought within six years. The Statute begins to run when the fraud is perpetrated. It is provided however that if any person liable to an action shall conceal the fact from the knowledge of the person entitled thereto, the action may be commenced at any time within the period of Limitation after the discovery of the cause of action. Potter vs. Smith, 36 Ind. 231. This last provision is as applicable to causes of Action for fraud as to causes of action of any other nature. Pitcher vs. Flinn, 30 Ind. 202."

The Court then discusses and decides the question whether the Reply setting up concealment was sufficient. The case was brought to set aside a fraudulent conveyance. The facts averred in the Reply are much stronger than those stated in the Reply in this case. But they were held to be insufficient. At page 319, the Court says: "We are of the opinion that the second paragraph of the reply was not sufficient. The Statute of limitations is a statute of repose,

and when its operation is sought to be avoided because the right of action was concealed by the party liable to the action the allegation and proof of the concealment should bring the case clearly within the section. The allegation that the defendants pretended and professed to the world that the transactions were bona fide transactions is too general to amount to any thing. The representation that the transaction was "valid in law" can hardly be regarded as the representation of a fact such as a party has a right to rely upon."

In Boyd vs. Boyd, 27 Ind. p. 429—which was an action to recover damages for fraud in an exchange of lands — it was held that "the concealment contemplated by the statute must be something more than mere silence; that it must be an arrangement or contrivance to prevent subsequent discovery and must be of an affirmative character." The analagous section of the Statute relating to the concealment of crime has been often construed in the same way.

In the State vs. Fries, 53 Ind. p. 492, the Court say; "A construction was given to the Statute 2 Rev. Statutes, p. 374 13, as far as this question is involved in the case of Jones vs. The State, 14 Ind. 120, wherein it was observed that the words "conceal the fact of the crime" must be held to mean the concealment of the fact that a crime had been committed, unconnected with the fact that the accused was the guilty perpetrator, and farther that such concealment must be the result of positive acts done by the accused which were calculated to prevent the discovery of the fact of such crime.

Seaton Free vs. the State, 13 Ind. 324; Ulmer vs. The State, 14 Ind. 52.

We cite other cases to the proposition that the fraud must be concealed."

The fraud must be secret or concealed as distinguished from that which is open, visible and known: Mastin vs. Smith, 1 Dillon 85; Angell on Lien, § 183—191. It must be a concealment of the cause of action, for if the party knows that he has a cause of action the statute will run against him even though he may be ignorant of the evidence by which it may be established: Parham vs. McGravy, 6 Rich Eq. Rep. 140; Hunter vs. Hunter, 50 Mo. 445. So whenever he has information sufficient to reasonably create the belief that fraud has been perpetrated the statute will begin to run: Angell on Lien § 187; Story 13 Equity, § 1521, a. He must use reasonable diligence to ferret out and discover the fraud: Martin vs Smith, supra. The statute runs before the discovery of the cause of action unless defendant conceals his liability. Pitcher vs. Flinn, 30 Ind. 202; Foot vs. Harrington, 41 N. Y. 164; 6 W. Va. 168. Mere ignorance of the facts constituting the cause of action is insufficient: Smith vs. Newby, 13 Mo. 159; Badger vs. Badger, 2 Cliff. 137. Mere silence is not sufficient. State vs. Greis, 52 Ind. 356. Concealment of facts which occurred prior to the time when the cause of action accrued will not prevent it running. Stanley vs. Stanton, 36 Ind. 445. The concealment must be by the defendant. Concealment by a person other than the defendant will not suspend the statute: Wells vs. Halpin, 59 Mo. 92. The burden of proof is on the party seeking to avoid the statute to show that the facts were fraudulently concealed: Blethen vs. Livering, 58 Me. 437. The law presumes that fraud will be discovered as soon as committed, and if the evidence fails to show when it was first dis-

covered, it will be treated as known at once: Hunter vs. Hunter, 50 Mo. 445.

The result of all these authorities undoubtedly is that the fraudulent act complained of must be concealed.

If the act averred to be fraudulent—is done in the open day, the mere fact that the party performing it does not confess the fraud amounts to nothing—nor does a mere representation that it was not fraudulent. There is no pretense in the reply that any act was concealed. The reply states that the Appellee concealed the fact that the confessed judgments and the deed were fraudulent; that he had committed perjury; that the funds which bought the judgments were Carpenter's; that the Appellee owned the property etc.

But the record plainly shows, that the trust deed was made in April, 1858, and other deeds followed from time to time, and it is admitted they were recorded. Carpenter openly managed the property from 1858 down to the bringing of suit, an interval of fourteen years. Six years after the conveyance of all the property, Keller bought the judgment. If Carpenter said he owned no property, he said what the Records had shown to be true for six years. There was no concealment and there was nothing to conceal. If a fraud were perpetrated it was done in the open day and all the world knew it as well in 1859 and the following years as it can be known now.

The assignment of the judgment was made in January, 1864—eight years elapsed before suit was brought. During all that time a large estate was held in the names of the assignees Walker and Allis, and their vendees Alvin B. Carpenter and Dewitt C. Keller. At any time after 1858 the judgment creditors could have attacked the conveyance

which they now say was fraudulent. If the assignees failed to do their duty, they could have been removed and other trustees substituted. The land under the statute of Indiana having been fraudulently conveyed — as is charged — could have been sold on execution. But the deeds were never attacked, no execution ever issued, the judgment was assigned and after the lapse of eight years it is sought to recover damages for an alleged fraud perpetrated fourteen years before.

If the original deed to Walker and Allis was valid, then Carpenter in truth and in fact owned nothing at the time the judgment was assigned. If that deed was invalid by means of being fraudulent it could only be attacked by a direct proceeding. If Keller and Alvin B. Carpenter took conveyances from the original assignees the deeds to them were good against all the world but creditors. As between the fraudulent grantor and the fraudulent grantee the deed is valid. It follows that even if the deeds complained of were made to defraud creditors yet it was true that Carpenter did not own the property so conveyed. His title to it being good and he having no means of knowing that it would ever be conveyed to him again, he simply told the truth when he said he did not own it. The remedy was to have directly attacked the conveyance alleged to be fraudulent. This was never done. The reason given for the acquiescence of the creditors is that they did not know the facts stated in the Reply. But they were bound to know and did know all the acts that Carpenter did. They knew every circumstance connected with the conveyances and with the property.

They had him arrested in Boston and subjected him to an examination, and allowed him to be discharged after ta-

king the poor debtor's oath. If they did not discover the fraud they now complain of, if any existed, it is their own fault and negligence. If they had sufficient information to reasonably create the belief that fraud was perpetrated the statute began to run against them.

We refer the Court to the briefs filed in the case of the Mercantile Bank of Hartford vs. Willard Carpenter and others—particularly to the proposition therein argued that the allegations of fraud are too general, and the question of laches. We claim that the Demurrer to the Reply reached back to the declaration and that the demurrer to the declaration ought to have been sustained.

But whether that position be correct or not we respectfully submit that the statute of Limitations is a complete bar to the action.

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